

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, December 14, 2023 at 7:30 p.m. in the Court Room of the Municipal Building, 1 Heineman Place, Harrison, New York.

Members Present

Paul Katz, Acting Chairman
Ernest Fiore
Steven Lowenthal
Thomas Foristel
Michael Tiesi
Jerome Valenti

Members Absent

Thomas Haynes

The Chairman called the meeting to order at 7:30 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z23-028	632 Anderson Hill Associates LLC	644	21	Variance Granted
Z23-029	9 Orchard Place Harrison LLC	21	3	Variance Granted
Z23-030	Joan Walsh	691	109	Variance Granted
Z23-031	Zempachi Tanaka	266	1	Heard – Closed – Findings being prepared
Z23-032	Cosmo Micalone	116	25	Heard – Closed – Findings being prepared
Z23-033	Joseph Fasciglione	244	62	Heard – Closed – Findings being prepared
Z23-024	120 Cottage LLC	961	7	Heard – Closed – Findings being prepared

The next meeting was scheduled to January 11, 2024.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.

Jacqueline Kiser

Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

THE FORMAL RECORD OF THE ABOVE PROCEEDINGS ARE THE TAPES THEREOF.

ALL DOCUMENTS
TO BE FILED
WITH THE CLERK

2023 DEC 19 A 2:01

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ZONING BOARD RESOLUTION Z23-028

DECEMBER 14, 2023

**SEQOR DETERMINATION OF SIGNIFICANCE FOR
632 ANDERSON HILL ASSOCIATES LLC
FOR PROPERTY LOCATED AT
632 ANDERSON HILL ROAD
KNOWN & DESIGNATED AS BLOCK 644, LOT 21**

WHEREAS, the Zoning Board of the Town of Harrison is conducting an Uncoordinated SEQOR Review of an Unlisted Action submitted by 632 Anderson Hill Associates, LLC, located in Purchase, New York, more specifically known and designated as Block 644, Lot 21; and

WHEREAS, the Applicant has submitted an application for Amended Site Plan approval to the Town of Harrison Planning Board for the Property, including a Long Form Environmental Assessment Form (“EAF”); and

WHEREAS, the Applicant proposes to construct an enlargement of a prior legal non-conforming restaurant; and

WHEREAS, the Planning Board referred the application to the Zoning Board to consider certain variances requested by the applicant; and

WHEREAS, the applicant seeks the following variances:

Variance 1: The addition increases the non-conformity with regard to the Required 100 feet buffer along Anderson Hill Road

Variance 2: The addition is indicated to have a side yard setback of (5.99) feet, thus requiring a variance of (14.01) feet.

Variance 3: The total of both side yards for the addition is approximately (7) feet, thus requiring a variance of (33) feet.

Variance 4: The proposed garbage enclosures are not located within the required rear yard and must follow the primary side yard setback of (20) feet, therefore the one enclosure that indicates a side yard setback of (5) feet requiring a variance of (15) feet.

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Variance 5: The proposed additional garbage enclosure is indicated to have a side yard setback of (10) feet. Thus, requiring a variance of (10) feet.

NOW THEREFORE BE IT RESOLVED, that in conformance with the procedures set forth in §617.6 (b) (3), the Town of Harrison Zoning Board hereby establishes its intent to serve as Lead Agency in this uncoordinated review.

BE IT FURTHER RESOLVED, pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency has determined that the proposed Unlisted Action will not have a significant effect on the environment for the reasons enumerated in the attached Negative Declaration Form.

On the motion of Zoning Board Member Jerome Valenti, seconded by Zoning Board Member Thomas Foristel, it was adopted by the following vote:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel, Michael Tiesi and Jerome Valenti

NAYS: None

ABSTAINED: None

ABSENT: Thomas Haynes

Rosemarie Cusemalo
Secretary, Board of Zoning Appeals

Paul Katz

Acting Chairman, Board of Zoning Appeals

The resolution was thereupon duly adopted.

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REASONS SUPPORTING THIS DETERMINATION

The proposed action calls for certain variances in regard to an application for enlargement of an existing legal non-conforming restaurant.

The project, as proposed to the Zoning Board, is the enlargement of an existing legal non-conforming restaurant. The premises constitutes 0.878 acres (38,250 S.F.) of land area on the south side of Anderson Hill Road in Purchase, New York. The land area is improved with a 4,622 S.F. prior legally non-conforming restaurant use and facility together with one hundred and ten (110) parking spaces. Presently there exists 2,537 S.F. on the first floor and 2,085 S.F. on the second floor.

The Premises are located in the R-1 Zoning District. However, the building was built before the Town of Harrison enacted its zoning ordinance, therefore it was constructed prior to the bulk area regulations which are today applicable in the R-1 zoning district. Accordingly, the restaurant use, and building are both legal prior non-conforming.

In the R-1 zoning district the front yard requirement is 40 feet and the present structure is set back 13.97 feet; the lot width requirement in the R-1 zone is 100 feet. and the Property has a lot width of 65 feet; the front yard buffer strip is 100 L.F. and only 22.76 feet exists.

The building has a minimum side yard of 5'4" and the R-1 zoning district requires a minimum side yard of 20 feet. The code requires a total side yard of 40 feet and the Property has a total of 7 feet side yard.

The minimum lot area in the R-1 zone is 1 acre and the Property is 0.878 acres and is therefore out of compliance by 0.122 acres.

The above existing deficiencies will not be expanded.

The present application before the Planning Board is for environmental authorization pursuant to SEQRA and amended site plan approval for the enlargement and expansion of a prior non-conforming use and structure by 609 S.F. in the basement, 826 S.F. on the first floor. The roof of the first-floor addition will have a 711 S.F. terrace for patron outdoor seasonal seating.

As explained below, in addition to environmental and site plan approval, certain area variances pursuant to Sections 235-61 A (2) and 235-61 (c) and expansion of a prior non-conforming use pursuant to Section 235-61 D. (1) (a), are required. The Town of Harrison Planning Board has referred the application to the Zoning Board for consideration of certain variances requests. Both the area variances and variance for enlargement of a prior nonconforming use and building will be addressed.

Potential impacts relating to the ultimate development of the site include the following:

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1. The subject parcel is located in the R-1 zoning district. The proposal is for the enlargement of an existing restaurant. No adverse zoning impacts will result from the development of the site as proposed.
2. The enlargement of the restaurant structure, and associated site improvements will result in temporary air quality impacts during construction. These temporary impacts to air quality will be carefully monitored by the Building Department and will be mitigated through the implementation of an approved construction management plan that will be submitted with the Building Permit, as well as through a continual reliance on construction Best Management Practices and equipment repair and maintenance. The construction management plan will emphasize minimizing fugitive dust.
3. No negative impacts to surface water features will result from the proposed action. New stormwater management facilities will assure that the post development runoff rates will be equal to or less than the pre-development rates. Additionally, approval of the project shall be conditioned upon compliance with all applicable Phase II stormwater regulations, including the preparation of a Stormwater Pollution Prevention Plan (SWPPP) and the filing of a NYSDEC State Pollution Discharge Elimination System (SPDES) General Permit. These measures which not only address water quantity, but water quality as well, will assure that the proposed action will not result in any significant adverse environmental impacts to surface water features.
4. The site layout, areas of disturbance and grading plan have been designed to minimize overall site disturbances and the extent of required cut and fill.
 - a. These potentially adverse impacts will be mitigated through the installation of soil erosion and sedimentation control devices. These devices will be designed and installed in accordance with the requirements of the Town of Harrison as well as New York Guidelines for Urban Erosion and Sediment Control, and the New York Standards and Specifications for Urban Erosion and Sediment Control.
 - b. The soil erosion and sediment control measures will minimize the downstream erosion hazard by controlling runoff at its source, minimizing runoff from disturbed areas and de-concentrating stormwater runoff.
 - c. During construction, site assessments and inspections shall be conducted. This shall include an assessment of the site prior to the commencement of construction and a certification in an inspection report that the appropriate erosion and sedimentation control measures have been adequately installed or implemented to ensure overall preparedness of the site for the commencement of construction. Following the commencement of

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construction, site inspections shall be conducted by a qualified professional at least every seven (7) calendar days and within 24 hours of the end of the end of a storm event of 0.5 inches or greater. The site contractor shall be responsible for implementing measures and correcting deficiencies noted during site inspections.

5. Long-term noise impacts are not anticipated as a result of the development of the project.
 - a. Short term noise impacts associated with the construction of the project will occur. Construction activities are anticipated to generate noise levels of in the vicinity 85dBA measured at 50' from the noise source.
 - b. Short term noise impacts shall be mitigated by maintaining construction equipment in good working order and providing mufflers. Construction activities shall be limited to the hours prescribed by Town ordinance.
6. All solid waste generated by the project shall be collected on site and shall be disposed of at a certified solid waste disposal facility. Similarly, all recyclables shall be similarly disposed of. No adverse impacts are anticipated.
7. The project will not create any flooding impacts. No floodplains are located in the vicinity of the site.
8. There will be no impact on a significant habitat area as a result of this project. No threatened or endangered species of animals or the habitat of such species have been identified on the site according to the NYS Natural Heritage Inventory. No significant adverse wildlife impacts are anticipated.
9. The proposed action does not create a material conflict with the community's current development plans or goals.
10. The project will not result in an adverse impact to the character of the surrounding neighborhood. The uses and building types along Anderson Hill Road are varied and the proposal is consistent with the character of the surrounding neighborhood. No significant adverse impact is anticipated.
11. The proposed action will not impair the character or quality of important historical, archaeological, or architectural resources. No such resources are located on or in the vicinity of the site according to the State Historic Preservation Office.
12. The proposed action will result in a change in the way energy is currently used on the site.
13. The proposed project does not present a hazard to human health.

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14. The action will not result in changes in two or more elements of the environment, which alone would not have a significant effect on the environment, but when considered together, would result in a substantial adverse impact on the environment.
15. The proposed action is not related to another action which would be funded or approved by an agency which, when considered cumulatively, would meet one or any of the aforementioned criteria.
16. There is no impact on the school districts.
17. The Harrison Off-Street Parking Ordinance requires one (1) space per four (4) seats and the project proposed complies with the code.
18. The following additional observations have been considered:
 - (a) Most properties on Anderson Hill Road are developed, and, therefore, the use will not prevent or substantially impair the reasonable and orderly use or development of other properties in the neighborhood; and
 - (b) The existing restaurant on the property has been part of the character of the neighborhood for a century, and, therefore, the advantage to be gained from the location of such use at the property outweighs the disadvantage to the neighborhood; and
 - (c) The health, safety, welfare, comfort, convenience and order of the Town will not be adversely affected by the construction of the addition; and
 - (d) The proposed redevelopment of the property will be in harmony with and promote the general purposes and intent of the Town Code; and
 - (e) The site is particularly suitable for the location of such use in the community in that the area along Anderson Hill Road between Purchase Street and Lincoln Avenue is comprised of various uses which include several restaurants; and
 - (f) The plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof; and
 - (g) The site location is not unsuitably located near a church, school, theater, recreational area or other place of assembly; and
 - (h) The access facilities are adequate for the estimated traffic from public streets and sidewalks and is designed to avoid traffic congestion. Further, vehicular entrances and exits shall be clearly visible from the street and are

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not within 75 feet of the intersection of street lines at a street intersection;
and

- (i) All required curb cuts are already in existence; and
- (j) Adequate provisions have been made for emergency conditions; and
- (k) There are 191 off-street parking spaces where 191 spaces are required in accordance with the provisions of Article VII. The layout of the spaces and driveways is convenient and conducive to safe operation; and
- (l) Landscaping will be provided along the rear line, and the 50 feet rear yard setback will be maintained; and
- (m) All existing side yard, front yard, and total side yard setback lines are being maintained without any further encroachment. No special setback, yard, height and building area coverage requirements or easements, right-of-way or restrictive covenants are required except as set forth above; and
- (n) Rooftop seasonal patron seating will be located on the first-floor rooftop, but no outdoor music or cabaret permitted; and
- (o) Adequate provisions have been made for the collection and disposal of stormwater runoff from the site and of sanitary sewage, refuse or other waste, whether liquid, solid, gaseous or of other character. Protection from storm water runoff and flood damage is a purpose of the Harrison Code (Section 235-2[B]); and
- (p) The engineers have confirmed that municipal services and facilities are adequate to provide for the needs of the proposed use; and
- (q) No seasonal flooding from the site onto Anderson Hill Road is anticipated.

Harrison Zoning Board of Appeals
632 Anderson Hill Road
Purchase, NY 10577

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar Z23-028

Date: December 14, 2023

Property Owner: 632 Hillside Associates, LLC

Applicant: 632 Hillside Associates, LLC

Property Address: 632 Anderson Hill Road Block 644 Lot 21

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Albert J. Pirro, Jr., Esq. filed an application on behalf of 632 Hillside Associates, LLC, for variances from the Zoning Ordinance to enlarge an existing restaurant known as 632 Trattoria. This property is located in an R-1 Zoning District. As per §235-9-B of the Table of Dimensional Regulations of the Town/Village of Harrison Zoning Ordinance the required front yard is forty (40) feet, the required side yard is twenty (20) feet, and the rear yard setback is fifty (50) feet. Accessory structures located within the side yard and rear yard have a minimum setback requirement of fifteen (15) feet.

WHEREAS, this application requires 7 Variances:

- Variance 1: The addition increases the non-conformity with regard to the Required 100 feet buffer along Anderson Hill Road
- Variance 2: The addition is indicated to have a side yard setback of (5.99) feet, thus requiring a variance of (14.01) feet.
- Variance 3: The total of both side yards for the addition is approximately (7) feet, thus requiring a variance of (33) feet.
- Variance 4: The proposed garbage enclosures are not located within the required rear yard and must follow the primary side yard setback of (20) feet, therefore the one enclosure that indicates a side yard setback of (5) feet requiring a variance of (15) feet.

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Variance 5: The proposed additional garbage enclosure is indicated to have a side yard setback of (10) feet. Thus, requiring a variance of (10) feet.

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, Harrison, New York, at 7:30 p.m., on November 8, 2023, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, Michael Tiesi, and Jerome Valenti; and

WHEREAS, the Board reviewed the Long Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, with regard to an uncoordinated SEQRA review, and determined that the action was an unlisted Action for which no Environmental Impact Statement was required; and

WHEREAS, the present application is for environmental authorization pursuant to SEQRA and amended site plan approval for the enlargement and expansion of a prior non-conforming use and structure by 711 S.F. in the basement, 826 S.F. on the first floor. The roof of the first-floor addition will have a 522 S.F. terrace for patron outdoor seasonal seating; and

WHEREAS, as explained below, in addition to environmental and site plan approval, certain area variances pursuant to Sections 235-61 A (2) and 235-61 (c) and expansion of a prior non-conforming use pursuant to Section 235-61 D. (1) (a), are required. The Town of Harrison Planning Board has referred the application to the Zoning Board for consideration of certain variances requests. Both the area variances and variance for enlargement of a prior nonconforming use and building will be addressed; and

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variances and neighbors appeared and spoke in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

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WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- 1) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- 2) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- 3) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- 4) Whether the requested variance is substantial;
- 5) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 6) Whether the alleged difficulty was self-created.
- 7) Most properties on Anderson Hill Road are developed, and, therefore, the use will not prevent or substantially impair the reasonable and orderly use or development of other properties in the neighborhood; and
- 8) The existing restaurant on the property has been part of the character of the neighborhood for a century, and, therefore, the advantage to be gained from the location of such use at the property outweighs the disadvantage to the neighborhood; and
- 9) The health, safety, welfare, comfort, convenience and order of the Town will not be adversely affected by the construction of the addition; and
- 10) The proposed redevelopment of the property will be in harmony with and promote the general purposes and intent of the Town Code; and
- 11) The site is particularly suitable for the location of such use in the community in that the area along Anderson Hill Road between Purchase Street and Lincoln Avenue is comprised of various uses which include several restaurants; and
- 12) The plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof; and
- 13) The site location is not unsuitably located near a church, school, theater, recreational area or other place of assembly; and

- 14) The access facilities are adequate for the estimated traffic from public streets and sidewalks and is designed to avoid traffic congestion. Further, vehicular entrances and exits shall be clearly visible from the street and are not within 75 feet of the intersection of street lines at a street intersection; and
- 15) All required curb cuts are already in existence; and
- 16) Adequate provisions have been made for emergency conditions; and
- 17) There are 191 off-street parking spaces where 191 spaces are required in accord with the provisions of Article VII. The layout of the spaces and driveways is convenient and conducive to safe operation; and
- 18) Landscaping will be provided along the rear line, and the 50 feet rear yard setback will be maintained; and
- 19) All existing set setback lines are being maintained without any further encroachment. No special setback, yard, height and building area coverage requirements or easements, right-of-way or restrictive covenants are required except as set forth above; and
- 20) Rooftop seasonal patron seating will be located on the first-floor rooftop, but no outdoor music or cabaret permitted; and
- 21) Adequate provisions have been made for the collection and disposal of stormwater runoff from the site and of sanitary sewage, refuse or other waste, whether liquid, solid, gaseous or of other character. Protection from storm water runoff and flood damage is a purpose of the Harrison Code (Section 235-2[B]); and
- 22) The engineers have confirmed that municipal services and facilities are adequate to provide for the needs of the proposed use; and
- 23) No seasonal flooding from the site onto Anderson Hill Road is anticipated.

Documentary Evidence Submitted In Connection With The Application

Applicant has submitted: (a) a Long Form Environmental Assessment Form (EAF). In this regard the Planning Board has declared itself Lead Agency. (See, Long Form EAF, Exhibit "A" incorporated hereby reference).

In addition, Applicant has submitted the affidavit of Ms. Donna Mangone, the affirmation of Albert Pirro, and the Exhibits referred to herein.

A-3. The Present Application Meets the Standards for Issuance of Area Variances

In addition to the Harrison Zoning Code, New York Town Law § 267-6(3)(c) sets forth the factors to be considered and balanced by the Harrison Zoning Board (hereafter “ZBA”) when deciding whether to approve an application for an area variance application.

(1) Change in Character of Neighborhood, or Detriment to Nearby Properties, Generally

- a. Town Law § 267-6(3)(b)(1) requires the ZBA consider whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties, by the granting of the variance. In this regard, the following is relevant.
- b. First, a drive along Anderson Hill Road displays neighboring properties with mixed uses and elevations in height. In particular between Purchase Street and Lincoln Avenue there is a school, a Post office, a Fire Department Station House; at least three restaurants, and a grocery store.
- c. Accordingly, there is no detriment to neighboring properties regarding the enlargement of the use.
- d. The absence of a detrimental impact on neighboring properties supports granting an area variance. Where, as here, the area variance requested is compatible with the area in which it is proposed, the variance grant will be in character with, the neighborhood.
- e. In fact, the effect of the requested variance on the neighborhood is considered a “critical” aspect of the board’s responsibility in balancing the relief requested against the interests of the municipality.
- f. Where, as here, one or more other parcels in the vicinity are non-conforming weighs in favor of granting the variance.
- g. Where, as here, the subject parcel is legal non-conforming both as to use, stories and setbacks, a rational basis does exist for approval of the application.

(2) Feasibility of Alternatives to Variance

- a. Another factor to be balanced by the ZBA is whether there are feasible alternatives for the applicant to consider other than variance. *See*, Town Law § 267-b (3) (b) (2). The question here starts with the review of the reason the applicant seeks the variances.

- b. As more fully set forth in the accompanying affidavit of Donna Mangone, the proposal results from the need to increase basement storage by 609 S.F., and the first-floor seating by 826 S.F. This is the minimal variance to increase storage, and seating for the first floor.
- c. In an effort to conform to the zoning requirements the present plan is the only proposal which will work. The present plan accommodates the goals in the Comprehensive Plan while allowing the Applicant a reasonable return.
- d. Other than the variances, the only alternative would be to demolish the building.
- e. The lot area is only 0.878 acres, and therefore if demolished the property cannot be developed for a residential dwelling which requires 1.0 acres. This alternative is in dereliction of the present zone and contrary to the purpose of the Code.
- f. This alternative does not achieve the desired benefit and therefore is not a feasible alternative.

(3) Substantiality of Variance

- a. Another factor the Board did consider, and balance, is whether the requested variance is substantial. *See*, Town Law § 267-b(3) (b)(3). Since the variance requested is the minimum necessary to afford relief to the property owner the support exists for the issuance of a variance.
- b. The impact of the variance sought by the Applicant does not cause a detriment to the health, safety and welfare of the neighborhood or community. This fact mitigates against the substantiality of the variance.
- c. As long as the requested variances do not change the character of the neighborhood, whether the variances are substantial is not as significant a factor.
- d. The building, extension is only 39 feet in a rearward direction, and an 826 S.F. first-floor extension therefore is relatively minor but needed to accommodate additional storage and patron seating needs. This rearward extension of 39 feet reduces the rear yard from 551 feet to 502 feet which is 450 feet greater than the 50 feet required rear yard.
- e. In the rear yard, an additional 20 parking spaces will be stripped so no parking variance is required.

(4) Adverse Effect or Impact on Physical or Environmental Conditions

- a. The fourth factor which the Board must balance is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *See*, Town Law § 267-b(3)b(4).

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- b. This factor takes into consideration elements such as drainage, flooding, stormwater runoff, topographical elements such as slopes, grade, trees and vegetation.
- c. A review of the topographical conditions of the property and the relationship of the proposed construction is set forth in the plans submitted by architect Chris Raffaelli, AIA of Studio Architects and the engineering firm of JMC Consulting. The stormwater management system has been designed to town and state standards.
- d. There is no adverse physical or environmental condition which results from the variance grant.

(5) Whether the Owner's Difficulty Was Self-Created

The fifth factor to be balanced by the ZBA is whether the applicant's difficulty was self-created. *See*, Town Law § 267-b(3)(b)(5). Where an area variance application is concerned the fact that the hardship is self-created is not at bar. In this case the hardship is not self-created.

(6) No Precedential Effect

- a. Although not enumerated as a factor to be considered, zoning boards naturally consider whether a variance grant will have any precedential effect.
- b. As demonstrated above, the variance requested is unique to the 632 Anderson Hill Road property topographical conditions.
- c. There is precedent for the relief requested in prior approvals by this Board.
- d. After referral by the Planning Board, this Zoning Board has issued variances in situations similar to the present application.

On June 11, 2009, the Harrison Zoning Board unanimously approved the application of the Cobblestone Restaurant, 620 Anderson Hill Road (Block 644 Lots 16 & 17) for variances to expand a prior non-conforming use in terms of setback, coverage, parking and a 10% increase in building area to construct a new kitchen. The Zoning Board in its Resolution of Approval specifically found that as a result of the enlargement. "There would be change in the character of the neighborhood." (Zoning Board Resolution, June 11, 2009, Cal. No. Z 09-017, P.2).

On July 17, 1986, the Harrison Zoning Board unanimously approved the application of the delicatessen and grocery store at 630 Anderson Hill Road, Purchase New York for an enlargement of the prior non-conforming use to increase parking in the rear of the premises. This variance issued by the zoning Board was conditioned

upon approval by 632 Trattoria. (Zoning Board Resolution, July 17, 1986 Cal. No. 1124.

It must be noted that where the Zoning Board has issued similar approvals in other projects it constitutes strong evidence for issuance of the variances in the present case (*See, Knight v. Amelkin*, 68 NY2d 975 (1986).

(7) Expansion of Non-Conforming Use Pursuant to Section 235-61 D (1)(a) Harrison Zoning Code¹

Section §235-61 D (1)(a) authorizes the Zoning Board to grant variances with respect to non-conforming uses, buildings, and lots, and to grant permits for enlargement or extension of a non-conforming use or building on a lot occupied by such use or building on the effective date of the Harrison Code. The enlargement or extension will be granted where:

- a. Such enlargement or extension was arranged, intended, or designed for such non-conforming use or building on the effective date of the Code.
- b. Such enlargement or extension shall not exceed, in all, 50% of the replacement cost of the existing building on the effective date of the Code, exclusive of the foundations.
- c. All parking and truck loading requirements of Article VII of the Code are complied with.

A review of the prior approval history by the Town of Harrison establishes that the use as a restaurant existed before the Code was adopted and that the owner had intended for its expansion prior to the Code adoption.

(8) History of Prior Municipal Approvals

The restaurant building and use at 632 Anderson Hill Road was built before 1930. On June 8, 1932, the owner applied for and received a permit from the Town of Harrison to *rebuild* the *second* floor. On October 4, 1933, April 13, 1935, and November 4, 1935 the Town of Harrison, issued permits to erect alterations to the lower floor, erect an addition to the kitchen, and erect an addition to the lunchroom, respectively.

On March 31, 1983, the owner received a building permit for renovation to the restaurant for new windows, doors, and entrance.

On April 1, 1985, the Harrison Zoning Board, under Calendar No. 962, issued a variance to the then owners of 632 Anderson Hill Road. The restaurant at the time

was known as George's Hilltop Restaurant. The application did seek an enlargement of the non-conforming use and building including an office space for restaurants only. The board granted the variance and did find that:

- a. the premises were used as a restaurant and bar prior to the effective date of the Ordinance,
- b. the expansion was intended or designed on the effective date of the Ordinance;
- c. the alterations or enlargement will not exceed 50% of the replacement cost of the existing building on the effective date of enactment of the code;
- d. all parking requirements are met.

(See, Zoning Board Resolution 962, dated April 1, 1985, Exhibit A annexed).
This determination is now law of the case.

The April 1, 1985 determination of the Harrison Zoning Board satisfies the requirement of section 235-61D regarding the intent on the date the Code made the property non-conforming.

The owner's intent to maintain the restaurant, enlarge, expand, and extend to meet customer demand predated the first Harrison Ordinance, and exists to this day. The entire lot upon which the building is situated was used and continues to be used, for a restaurant and associated parking.

On February 2, 1986, the Town issued the building permit for the expansion. After the 2010 acquisition by the present owners, the intent to extend and enlarge the premises as and for restaurant use continued. On September 29, 2010, the Town issued a permit to construct a bay window.

On May 1, 1986, Ronald and Rose Mignone owners of 630 Anderson Hill Road, Purchase, New York, the delicatessen and grocery store next to 632 Trattoria applied for a variance to extend the parking area behind the adjoining delicatessen. The Harrison Zoning Board granted the variance and found that the widening and expansion of Anderson Hill Road eliminated parking curbside and created a hardship.

The Zoning Board recognized that the application at the delicatessen required a change of plans for the restaurant at 632 Anderson Hill Road as well, then known as George's Hilltop Restaurant as well. The delicatessen and the restaurant entered into an agreement to share the use of parking and driveway. The Board expressly found that "the joint off-street parking and ingress and egress would contribute to the safety and well-being of the community." (See, July 17, 1986 decision of the Harrison Zoning Board, Cal. No. 1129, Exhibit B annexed).

On December 21, 2010, the Planning Board issued site plan approval for the restaurant to convert the second-floor office to additional restaurant seating and an addition to the bathroom. (See, Planning Board Certification 2010/88, December 21, 2010, Exhibit C annexed). On March 22, 2011, the Town issued a Building Permit.

On June 27, 2017, the Harrison Planning Board issued amended site plan approval for the second-floor addition to Tredici' Restaurant located at 578 Anderson Hill Road. (See, June 27, 2017 Amended Site Plan Approval Resolution No. PB 2017/53, Exhibit D annexed. This approval is part of the character of the neighborhood.

(9) Present Proposed Expansion or Enlargement

The enlargement or expansion will maintain the present height of the structure as well as side yard setbacks. All enlargement and expansion will be in the rear of the premises without increasing the present side yard deficiencies.

The Town of Harrison, having enacted Section 235-61D of the Harrison Zoning Code, has safeguarded the rights of property owners to maintain the use, and operation of their property acquired, and put to use, prior to enactment of changes to the Code. Under the Harrison Code the property owner has a vested right to use the land as a prior non-conforming restaurant. *Matter of Rudolf Steiner Fellowship Foundation DeLuccia*, 90NY2d 453 (1997).

In this case the owners purchased the property with the intention of using its full extent for a particular restaurant operation. Accordingly, expansion of the operation is deemed legal.

As fully set forth in the submission by Chris Raffaeli AIA, the expansion will not exceed 50% of the replacement cost of the building on the effective date of enactment of the Code (See Letter submission of Chris Raffaeli, AIA, Exhibit E). Further, as established by the site plan submission of JMC Consulting the parking meets code requirements (See Exhibit F annexed).

NOW THEREFORE BE IT RESOLVED that the condition in the New York Town Law and the Harrison Town established that the benefit to the applicant of the variance were granted outweighs any detriment or burden on the neighborhood; and the condition in the Town of Harrison Code Section 235-61 A (2), 235-61 (c) the application to enlarge an existing non-conforming restaurant building and use as indicated in the plans submitted with this application be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

These variances shall lapse unless construction begins within two years from the date these variances are recorded in the Clerk's Office and is completed no more than four years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Thomas Foristel, seconded by Zoning Board Member Stephen Lowenthal at the December 14, 2023 meeting.

ADOPTED:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel, Michael Tiesi and Jerome Valenti

NAYS: None

ABSTAINED: None

ABSENT: Thomas Haynes

Rosemarie Cusumano
Secretary, Board of Zoning Appeals

Paul Katz

Acting Chairman, Board of Zoning Appeals

Z23-028
632 Anderson Hill
12/14/2023

2023 DEC 19 A 2 02

RECEIVED

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z23-029

Date: December 14, 2023

Property Owner: 9 Orchard Place Harrison LLC

Property Address: 9 Orchard Place

Block 21 Lot 13

WHEREAS, the applicant, the property owner, applied for a Building Permit for construction of a new single-family home at the property and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Alfredo Di Pietro, Architect, on behalf of the property owner, 9 Orchard Place Harrison LLC, filed an application on October 13, 2023 to construct a new single-family home. This property is located in an R-75 Zoning District and pursuant to §235-33 of the Town/Village of Harrison Ordinance, the minimum lot width at the front lot line in any residential district shall not be less than 75% of the required lot width at the required minimum front yard depth, but in no case shall it be less than 50 feet. Therefore, the required lot width in an R-75 is 70 feet. 75% of 70 feet is 52 feet 6 inches. The front property line at Beaver Landing is 36.88 feet, *thus requiring a 15.62-foot variance*; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 7:30 p.m., on November 8, 2023 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present or indicated that they had listened to tapes of the meeting: Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel, Michael Tiesi and Jerome Valenti; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variances and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

*Z23-029
9 Orchard Place Harrison LLC
12/14/2023*

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variances and that the variances sought were the minimum variances necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The property is located at 9 Orchard Place in an R-75 Zoning District and has two front yards Orchard Place and Beaver Landing.
2. The applicant is proposing to demolish existing house which fronts on Orchard Place which was built in 1923 and is approximately 826 square feet.
3. The applicant is proposing to construct an new single-family home fronting on Beaver Landing.
4. No undesirable change in the character of the neighborhood or detriment to nearby properties will be created by the granting of the variance.
5. There were no objections from any neighbors.

NOW THEREFORE BE IT RESOLVED, that the application for variances for an addition and alterations, submitted with this application be, and the same is hereby granted:

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

These variances shall lapse unless construction begins within two years from the date these variances are recorded in the Clerk's Office and is completed no more than four years from said date.

Z23-029
9 Orchard Place Harrison LLC
12/14/2023

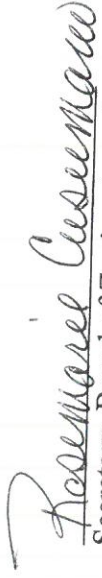
Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Michael Tiese, seconded by Zoning Board Member Thomas Foristel at the December 12, 2023 meeting.

ADOPTED:

AYES:	Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel, Michael Tiesi and Jerome Valenti
NAYS:	None
ABSTAINED:	None
ABSENT:	Thomas Haynes


Secretary, Board of Zoning Appeals



Acting Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department.

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BUILDING DEPARTMENT
CITY OF CHICAGO

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Z23-029
9 Orchard Place Harrison LLC
12/14/2023

BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK

Calendar No. Z23-030

Date: December 14, 2023

Property Owner: Joan Walsh

Property Address: 6 Spring Lake Drive Block 691 Lot 109

WHEREAS, the applicant, the property owner, applied for a Building Permit to install a generator and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Joan Walsh filed an application on October 17, 2023 for a variance from the Zoning Ordinance to install a generator at 6 Spring Lane Drive. This property is located in an R-1/3 Zoning District and pursuant to the Code of the Town/Village of Harrison §235-9 B of the Table of Dimensional Regulations the minimum required side yard setback is 15 feet. The proposed 22 kW Generator with a side yard setback of 1.8 feet; ***thus requiring a variance of 13.2 feet***; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 7:30 p.m., on November 8, 2023, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, Michael Tiesi and Jerome Valenti; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

Z23-030
Walsh
12/14/2023

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

- A) The property is located at 6 Spring Lake Drive and is in an R-1/3 zoning district.
- B) The proposed location of the 22kW generator will be on an existing patio. The affected neighbor at 8 Spring Lake Drive's driveway is adjacent to the existing patio and there is screening between the patio and the driveway.
- C) There were no objections from any of the neighbors.

NOW THEREFORE BE IT RESOLVED, that the application for permission to install a generator as indicated in the plans submitted with this application be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

This variance shall lapse unless construction begins within two years from the date this variance is recorded in the Clerk's Office and is completed no more than four years from said date.

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12/14/2023

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Ernest Fiore, seconded by Zoning Board Member Jerome Valenti at the December 14, 2022 meeting.

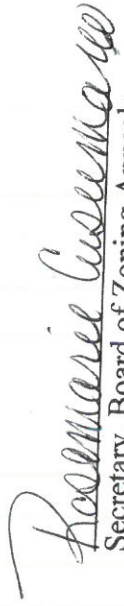
ADOPTED:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel,
Michael Tiesi and Jerome Valenti

NAYS: None

ABSTAINED: None

ABSENT: Thomas Haynes


Secretary, Board of Zoning Appeals



Acting Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department.

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12/14/2023

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